IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1238 OF 2005

Prabhudas Virchand Lotia & Anr. ...Petitioners.
Versus
Maharashtra Housing and Area Development
& Ors. ...Respondents.

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Dr.Virendra Tulzapurkar i/b. Kanga & Co. for the Petitioners.
Ms. P.D. Ankaleshwaria with Ms.Sindha Sridharan, AGP for Respondent No.1 to 3.
Mr.Rejesh Patil i/b. Mahesh Jani for Respondent Nos.5 to 8.

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CORAM : DR. D.Y. CHANDRACHUD, J.

May 4, 2005.

ORAL JUDGMENT:

Rule, by consent returnable forthwith. Counsel appearing for the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The Bombay Metropolitan Region Development Authority reserved a commercial plot for a Cinema and Drama Theatre in the planned proposal for the Bandra Kurla Complex. That Plot was CTS 791 in A Block of Bandra Reclamation, Bandra (West), Mumbai. On 8th May 1979, the Fourth to Eighth Respondents who were the Trustees of the Rang Sharda Pratisthan, a Public Trust registered under the Bombay Public Trusts Act, 1950, applied for the allotment of the land to the Trust. The First Respondent executed a Deed of Lease in favour of the Trust on 6th July 1981 for a period of 90 years. Under Clause 1 of the Deed of Lease, the Trust was entitled to enter upon the land for the purpose principally of erecting a Drama Theatre and executing other works in accordance with the stipulations contained in the Lease Deed. Under Clause 2(c) of the Lease Deed, the Trust was required to use the land for the bona fide purposes of construction, maintenance, conduct and administration of the Drama Theatre and purposes incidental thereto or for commercial purposes permitted under any law for the time being in force. In clause 2(i) there was a prohibition on the assignment and transfer of the land or

any interest thereunder of the benefit of the agreement without the previous written permission of the First Respondent. However, it was stipulated that this did not affect the right of the Trust to transfer or to deal with the structure or any part thereof in any way that it desired for the purpose of raising finance or otherwise. On 23rd January 1989 a development agreement was entered into by the Trustees of the Trust with the First Petitioner. On 25th July 1985 the benefit of the agreement dated 23rd January 1981 came to be transferred to the Second Petitioner. Plans for construction are stated to have been approved by the First Respondent and the Second Petitioner has constructed a drama theatre, a Commercial Wing and a hotel. The Commercial Wing consists of a basement, ground floor and 11 storeys. According to the Petitioner, the drama theatre has been used for staging plays in Marathi, Hindi and English and about 800 plays have been staged in the auditorium.

3. On 13th June 2002, an officer of the First Respondent called upon the First Petitioner to furnish a certified copy of the Lease Deed

dated 6th July 1981. On 2nd July 2002, the Third Respondent who is the Chief Officer of the First Respondent sought a disclosure of certain documents. On 3rd July 2002, an officer of the First Respondent is stated to have visited the office of the Second Petitioner and to have demanded the original occupancy register for the month of June 2002. Inspection thereof is stated to have been given by the Second Petitioner. On 22nd July 2002, the Third Respondent issued a notice to show cause to the First Petitioner to explain why the Lease Deed should not be terminated as the Trust had changed the entire nature and use of the drama theatre thereby using the premises for a purpose for which they were not intended and on the ground that the Trust had not obtained permission for a change of the use of the premises. The show cause notice alleged that the Trust had sold the premises without the permission of the First Respondent under Clause 2(i) of the Lease Deed of 1981. A reply was filed on behalf of the Trust on 30th July 2002 denying the allegations contained in the notice to show cause. A personal hearing was given by the Third Respondent on 29th October 2004. The Third

Respondent called upon the Trust to deposit an amount of Rs.2,16,34,494/- on the ground that the Trust had violated the terms and conditions of the Lease Deed by using the land for commercial purposes. The Trust challenged the order of the Third Respondent by filing an appeal before the Vice President and the Chief Executive Officer of the First Respondent. The Second Respondent passed the impugned order on 15th February 2005 by which he directed the termination of the Lease and the recovery of possession from the Petitioner.

4. In assailing the order passed by the Second Respondent, a serious grievance has been made in the course of submissions as well as in the Writ Petition of the language which has been used by the Second Respondent in the course of his order. Counsel appearing on behalf of the Petitioner submitted that the language used by the Second Respondent and the expression of his views on matters unrelated to the issues before him as an adjudicating authority established a clear case of bias which has disabled the

Second Respondent from exercising his jurisdiction fairly and in accordance with law.

5. The impugned order records that the Rangsharda Pratisthan was established by a former Member of Parliament Shri Vidyadhar Gokhale who was an eminent litterateur. The Second Respondent has commented on the founder of the Trust in the following words:

> " Shri Gokhale belongs to the class in the Indian Society which was ordained by Manu to be repository of the knowledge and education and thus this class had monopoly over the knowledge/education for last 5,000 years. Perhaps in pursuance of this mandate Honourable Shri Gokhale thought it fit to protect Marathi Drama and therefore he approached government and MHADB for suitable land after establishing said Rangashardha Pratishthan and requested for a piece of land of MHADB reserved for Drama Theatre admeasuring 3,000 sq.m. at Bandra."

The order passed by the Second Respondent also comments upon the First Petitioner thus:

> "Shri Prabhudas Lotia also belongs to the class which was

> ordained by the Manu to be repository of the wealth of the society and thus this class enjoyed the monopoly over wealth of the society at the cost of majority of the population. Perhaps this mandate made Shri Lotia to think that he has the legitimate right to grab this MHADB's land which was allotted for the cultural purpose and utilize it for purely commercial activity. ... Shri Lotia is like a mythological Hindu God, an entity with many faces."

The Second Respondent has besides these observations adverted to an anonymous letter of 16th October 2002 received by an Ex-President of the First Respondent which dwells on the death of the founder of the Trust. The Second Respondent comments on the letter and the death of the founder in the following terms in his order:

> "The letter suggests that Shri Gokhale got a shock and heart attack because of this cheating by Shri Lotia to whom he handed over this precious piece of the land obtained from the MHADB without any land premium. It is a poetic justice?"

6. The Second respondent was exercising quasi judicial powers. These observations which have been made by the Second Respondent constitute a transgression of the limits of restraint that

must be observed by every judicial and quasi judicial authority. The language of the law is language of civility. The discourse which takes place in a Court or in any judicial or quasi judicial proceeding must be guided by decorum and propriety. Norms of restraint must be observed and it is based on those norms that the Court or judicial authority establishes its independence from the arena of conflict into which only the parties descend. Therefore, even in its criticism of the conduct of litigating parties – where such conduct has a bearing on the dispute under adjudication - the Court or the judicial authority must observe this cardinal principle. There are some elementary features of judicial functioning but even though they are simple in their appeal they have an elemental role in the discharge of the judicial function. Caste, community, religious preferences and subjective predispositions are matters extraneous to judicial functioning. Restraint is the soul of law just as balance is the heart of judicial decision making.

7. In the present case, the Second Respondent who is a quasi

judicial authority has chosen to express a subjective personal view on a matter which was extraneous to the dispute before him. The community to which the founder of the Trust belongs or for that matter the community to which the First Petitioner belongs are wholly irrelevant to the exercise of his functions by the First Respondent. Yet, the Second Respondent has made strident observations at more than one place in the impugned order. A judicial authority or a quasi judicial authority who betrays a lack of restraint and allows his subjective predilections on extraneous considerations to influence the course of the proceedings betrays the trust under and upon which the very credibility of the process is founded. The Second Respondent is a public official and it is unfortunate that the Court has to remind a public authority of its solemn duty of administering law without fear or favour. The Second Respondent has in the course of his order commented at more than one place on the submissions of Counsel appearing on behalf of the Petitioner before it. Counsel at the Bar have historically been regarded as officers of the Court. That is because they perform a wider public duty of enabling the Court to

reach to the truth in the midst of conflict. Whether an argument should be accepted is entirely for a judicial authority to decide. The rejection of arguments, however, cannot be paraphrased with personal comments which in this case unfortunately has occurred at more than one place in the order. A few references in that regard would be material:

> "I do not understand how the senior Advocate like Shri Tulzapurkar can make such an incorrect argument before me. ... How the land which was allotted only for the purpose of Drama Theatre and few rooms for accommodating artists can be used for 4-Star Hotel and commercial activity, I think only Adv. Tulzapurkar can explain this. ... It is not a fraud against the public in general and MHADB in particular? The answer to this can also be given only by Adv. Tulzapurkar. ... Without seeking permission from the Charity Commissioner the land having a price of Rs.60 lakhs in the year 1981 has been given to Shri Lotia, does it not amount to breach of trust? The answer to this can be given only by Adv. Tulzapurkar."

At another place in the order, the argument of Counsel has been described as treacherous:

> "Hence activities being conducted on the land are allowed as per this provisions is a treacherous argument and needs to be rejected."

Rejection of an argument should not assume the shades of ridicule. That is what has happened in the present case.

8. Having perused the order of the Second Respondent, I am of the view that it is not possible to disassociate the observations which are made in several places in the order from the discussion on the merits of the case. The allegations of wrongful conduct which have been levelled against the Petitioner will have to be investigated but they must be investigated with objectivity and impartiality. The appropriate course of action in my view, would be therefore, to quash and set aside the impugned order dated 15th February 2005 and to direct that there be a fresh adjudication of the proceeding which has been moved by the Petitioner against the order of the Third Respondent dated 29th October 2004. There shall be a direction to the Fourth Respondent to assign the proceedings to an officer of a rank equivalent to the Second Respondent for the purposes of conducting the proceeding. The Second Respondent shall

disassociate himself both in an administrative and in a quasi judicial capacity from the present case and the proceedings shall be disposed of by the officer nominated by the Fourth Respondent uninfluenced by any observations contained in the impugned order. In order to facilitate a fresh determination, the impugned order dated 15th February 2005 is quashed and set aside. However, it is clarified that this Court has not had occasion to go into the allegations that have been made against the Petitioner since the case is being remanded for fresh decision. All the contentions of the parties on merits are kept open. The Petition is accordingly disposed of. There shall be no order as to costs.

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